TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~98~~ 6

WILLIAM J. STRATTON, SECRETARY OF STATE OF THE STATE OF ILLINOIS, APPELLANT,

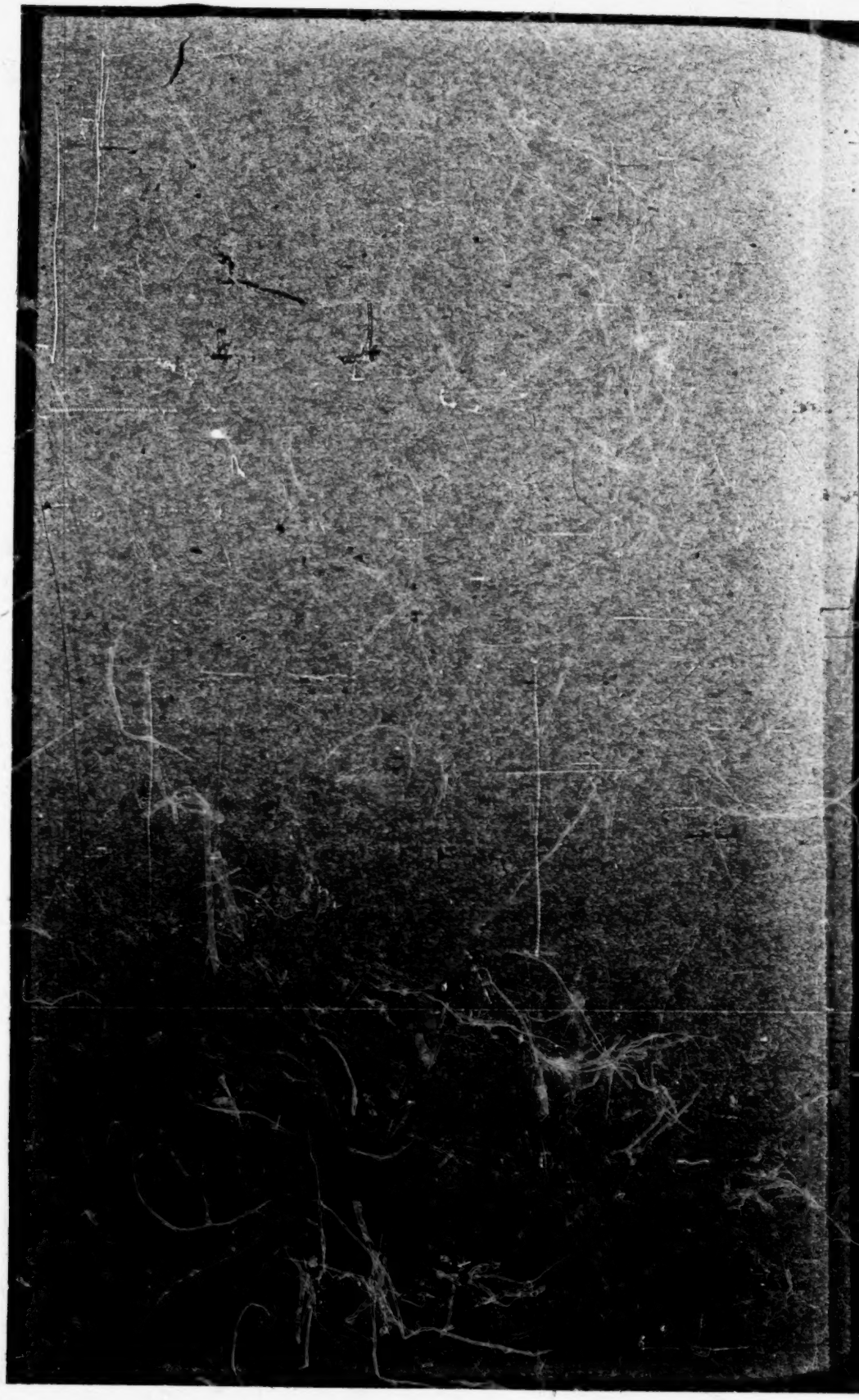
vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED MAY 20, 1929

(34,223)



(34,223)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

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vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Page
Record from district court of the United States for the southern district of Illinois	1
Caption	1
Bill for injunction	2
Exhibit "A"—Annual report of secretary of State	10
Exhibit "B"—Portion of general corporation act of Illinois.	14
Subpœna and marshal's return	26
Motion for temporary restraining order	27
Temporary restraining order	28
Motion to dismiss	29
Memorandum on motion to dismiss	30
Decree	37
Exception to entry of decree	38
Petition for appeal	39
Assignment of errors	39
Order allowing appeal	41
Appeal bond	41

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	Page
Order extending time for filing record	46
Præcipe for record	47
Clerk's certificate	48
Citation and service	49
Clerk's certificate, United States circuit court of appeals (omitted in printing)	
Proceedings in United States circuit court of appeals, seventh circuit.	51
Caption (omitted in printing)	
Appearances of counsel (omitted in printing)	
Order setting cause	51
Argument and submission (omitted in printing)	
Opinion, Evans, J	52
Decree	56
Motion to substitute party appellee	57
Petition for rehearing (omitted in printing)	
Order substituting party appellee	57
Answer to petition for rehearing (omitted in printing)	
Order denying petition for rehearing	58
Petition for appeal, assignment of errors, and prayer for reversal	58
Order allowing appeal	60
Præcipe for transcript of record	61
Bond on appeal (omitted in printing)	
Clerk's certificate (" " ")	
Citation and service (" " ")	
Statement of points to be relied upon and designation to print entire record	62

2 Pleas in the district court of the United States of America, within and for the Eastern Division of the Southern District of Illinois, held at the City of Springfield, in said division and district, before the Honorable Louis FitzHenry, Judge of said court on Thursday, the seventh day of June, in the year of our Lord one thousand nine hundred and twenty-eight and of the Independence of the United States of America, the one hundred and fifty-second year. Attest:

Plaet

S. T. BURNETT
Clerk.

July 21, 1927. 3 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Illionis,

Southern Division.

St. Louis Southwestern Railway Company, a corporation *vs.* Louis L. Emmerson, Secretary of State of the State of Illinois.	No. 800. In Equity.

Be it Remembered that heretofore to wit: on the 21st day of July in the year of our Lord one thousand nine hundred and twenty-seven, that being one of the days of the June Term, A. D. 1927, of the district court of the United States for the Southern Division of the Southern District of Illinois, the plaintiff herein by its solicitor filed in the office of the clerk of said court, a certain bill of complaint, which said bill of complaint was and is in the words and figures, following, to wit:

4 * * (Caption) * *

BILL FOR INJUNCTION.

To the Honorable Judges of Said Court, in Chancery Sitting:

Your orator, the St. Louis Southwestern Railway Company, respectfully represents to your Honors that it is a corporation organized under the laws of the State of Missouri, and is duly authorized to do business in the State of Illinois, and is a citizen and resident of the State of Missouri; that it has property located in the State of Illinois and is doing business in said State; that it is organized as a corporation with an authorized capital stock of par value of $130,000,000.00, consisting of 1,300,000 shares of a par value of $100.00 each; that of said authorized capital stock, $36,249,750.00, par value, has been actually issued and is outstanding, and that the balance thereof is unissued; that the amount of said capital stock authorized, and the amount which has been issued, appears by copy of its charter now on file in the office of the Secretary of State of the State of Illinois, and on the annual report for the year 1927, filed by your orator with Louis L. Emmerson, Secretary of State of the State of Illinois, the

defendant herein, who is a citizen and resident of the State of Illinois.

Your orator represents that it is engaged in intrastate and interstate transportation of freight, passengers, mail and baggage, as a common carrier, and as such is subject to the Interstate Commerce Act and Transportation Act of the United States of America; that your orator is engaged in intrastate and interstate commerce in and between the
5 States of Missouri, Illinois, Arkansas, Louisiana, Texas and other states; that the total vaue of the property of your orator engaged in such business is, as set forth in said report to the defendant, Louis L. Emmerson, the sum of $76,793,697.79; that the total business of your orator transacted everywhere during the year 1926 was $18,201,955.32; the total length of railroad track owned by your orator in all states was 940.58 miles; that the total value of the property of your orator in Illinois, was $786,196.00; that the total business transacted by your orator at or from places of business in the State of Illinois, during the year 1926, was $2,868.36; all of which was shown by the annual report of your orator filed with the defendant, the Honorable Louis L. Emmerson, Secretary of State of the State of Illinois, under the provisions of Section 105 of the General Corporation Act of the State of Illinois, which said report was filed for the purpose, and the data therefrom used by said defendant for the computation and assessment of franchise tax for the year beginning July 1, 1927, and ending June 30, 1928, and a copy of which said annual report is attached hereto and marked Exhibit "A."

Your orator further shows to your Honor that the franchise tax provided in paragraph 105 of the General Corporation Act of Illinois is based on the proportion which the property located and business done in Illinois bears to the property located and business done in all states; that by paragraph 107 of said Act, a minimum tax is provided for corporations owning no property in the State of Illionis, and doing no business in said State, which said minimum tax or fees, is based on the issued capital stock, and by which, a corporation having an issued capital stock in excess of $10,000,000.00 is required to pay an annual fee of $1000.00.

Your orator further shows to the Court that by further provision of paragraph 105 of said Corporation Act, it is provided that in no event shall the amount of the license fee or franchise tax of a foreign corporation be less than
6 that required by the Act of a corporation having no

tangible property or business in the State of Illinois.

Your orator further shows that if said franchise tax or franchise license fee be computed according to the property owned, business done and mileage of your orator in Illinois, and in other States, that it would owe the State of Illinois, a tax of 5c on each $100.00 of .00746% of its issued and outstanding capital stock, amounting to One Hundred and Thirty-five and 21/100 ($135.21) Dollars, as such franchise tax, for the year 1927.

Your orator further shows to the Court that the defendant, Louis L. Emmerson has, over the objection and protest of this defendant, assessed said tax at the sum of $1000.00; that on first being advised of said assessment, your orator notified the defendant, Louis L. Emmerson, that it objected to the amount of said tax as fixed by him, and requested a hearing before him in connection therewith, and that said Louis L. Emmerson neglected, failed and refused to fix a time and place for such hearing; and that the Agent of your orator called at the office of said Louis L. Emmerson and explained fully to said defendant's assistant in charge of the Assessment of Franchise Taxes, the contention of your orator by virtue of which a franchise tax for the year 1927, not in excess of One Hundred and Thirty-five and 21/100 ($135.21) Dollars, was due, and that said Assistant, on behalf of and with the authority of said Louis L. Emmerson, insisted that a franchise tax of $1000.00 was due.

Your orator further shows to your Honors that it has tendered to the defendant, Louis L. Emmerson, said sum of One Hundred and Thirty-five and 21/100 ($135.21) Dollars, in payment of the franchise tax due from it to the State of Illinois, for the year July 1, 1926, to June 30, 1927, and that its tender was refused; and that it is ready and willing to pay said amount to said Louis L. Emmerson, at any time he may choose to accept same.

7 Your orator attaches hereto as its Exhibit "B" and by reference makes a part hereof, those portions of the said General Corporation Act of Illinois, which are pertinent to the issues in this suit.

Your orator further shows to your Honor that the defendant, Louis L. Emmerson, as Secretary of State of the State of Illinois, claims that under Section 107 of said Act, a minimum Franchise Tax can be lawfully collected from a foreign corporation, based on the total amount of its issued capital stock; while your orator denies that the State of Illinois can lawfully provide a minimum tax, based on the total

issued capital stock of a foreign corporation, where said foreign corporation has property in and does business in Illinois; as to do so would place an unreasonable burden on and discriminate against Interstate Commerce and deny your orator the equal protection of the law, respectively, in violation of the rights of your orator under paragraph 3 of Section 8 of Article 1, and Section 1 of the Fourteenth Amendment of the Constitution of the United States of America.

Your orator further shows to your Honors that the defendant, Louis L. Emmerson, as Secretary of State of the State of Illinois, also claims that where the franchise tax due from a foreign corporation, as computed under the provisions of Section 105 of said Act, amounts to less than the minimum franchise tax prescribed by Section 107 of said Act; that the said minimum tax can lawfully be collected from a foreign corporation, based on the total issued capital stock of said corporation, irrespective of the amount of property owned and business done by it in the State of Illinois, and that pursuant to the provisions of Section 107 of said defendant Louis L. Emmerson, Secretary of State of the State of Illinois, has notified your orator that he had, under said Section 107, assessed a franchise tax of $1000.00 against it.

8 Your orator further shows that there is no method provided by the laws of the State of Illinois for an appeal from the fixing of said tax, as aforesaid, by the defendant, Louis L. Emmerson, Secretary of State of the State of Illinois, and that there is no provision in said law whereby the fixing of said tax alleged to be due from your orator, under Sections 105 and 107 of the General Corporation Act of Illinois, by reason of the amount of its issued capital stock, may be reviewed by a Court. Your orator further shows that by further provisions of said General Corporation Act it is made the duty of the defendant, Louis L. Emmerson, on the failure of any corporation to pay the franchise taxes assessed by him, if a foreign corporation, to forfeit the right of such corporation to do business in the State of Illinois, and to make illegal and unlawful, under the laws of the State of Iliinois, any business contract made by your orator in said State, and to inforce divers penalties, including criminal prosecution, against your orator, its officers and employees, on the ground that it has failed to comply with said General Corporation Act, and is unlawfully doing business in Illinois.

Your orator further represents that this is a suit in equity, brought by it to restrain the inforcement, operation and execution of the Statute of the State of Illinois, known as the

General Corporation Act, and particularly the portions, (Section 107) thereof, providing for the payment of a minimum franchise tax of $1000.00, based solely on the total issued capital of your orator, as a condition for maintaining its authority to do business in the State of Illinois, by restraining an officer of said State, Louis L. Emmerson, Secretary of State, who is a citizen and resident of the State of Illinois from inforcing the provisions of said Statute against your orator, who is a citizen and resident of the State of Missouri, on the ground that said Statute is unconstitutional as applied to your orator, under the Constitution of the United States of America; and that this suit is brought to prevent said
9 defendant, under color of said Illinois Corporation Act, from depriving it of privileges and immunities secured by the Constitution of the United States; and your orator further shows that this suit is brought to prevent the defendants from depriving it, under color of said Section 107 of the General Corporation Act of Illinois, of rights, privileges and immunities secured to it by the Constitution of the United States; further, that this is a suit of a civil nature, being a bill in Equity, filed by the plaintiff, a citizen and resident of the State of Missouri, against the defendant, a citizen and resident of the State of Illinois, to enjoin the defendant from enforcing or undertaking to enforce against the plaintiff, certain forfeitures and penalties provided by a Statute of the State of Illinois, account failure to pay the annual License fee or Franchise Tax; the matter in controversy exceeds, exclusive of interest and costs, the sum of $3000.00 in this, that the defendant seeks to enforce the payment by plaintiff of the sum of $1000.00 together with an additional penalty of 5% per month after August 1, 1927; which tax and penalties is made a first and prior lien upon the property of plaintiff in the State of Illinois; that the authority of plaintiff to do and transact business in Illinois is subject to immediate revocation by the defendant, thereby making it unlawful for the plaintiff to transact any business in Illinois, which would result in a loss to revenue to the plaintiff of at least $2500.00; or if plaintiff transacted such business without such authority, it would be liable to a penalty of not less than $250.00, nor more than $1000.00 for each item of business so transacted by it, which penalties would aggregate at least $5000.00; further, that to revoke the authority of plaintiff to do business in the State of Illinois, would damage plaintiff in a large sum, to-wit, $5000.00 or more.

10 Your orator further represents that said Section 107

of the General Corporation Act of Illinois, as applied to your orator by the defendant, Louis L. Emmerson, is illegal and unconstitutional in that such application unreasonably interferes with and directly burdens Commerce between the different states in violation of Section 10 of Article I of the Constitution of the United States; and in that it deprives your orator, a citizen of the State of Missouri, of privileges and immunities enjoyed in Illinois by the citizens of other states, in violation of Section 2 of Article IV of the Constitution of the United States; in that, it impairs the obligation of the contract between your orator and the State of Illinois, in violation of Section 10 of Article I of the Constitution of the United States; in that it abridges the privileges and immunities of your orator, a citizen of the State of Missouri, discriminating against it in favor of other corporations similarly situated as to property owned and business done in Illinois, and deprives your orator of its property without due process of law and denies your orator of the equal protection of the law, all in violation of the XIV Amendment to the Constitution of the United States; in that such application by said defendant, imposes a Franchise Tax based not upon the proportion of issued capital stock of your orator, represented by property owned and business done in Illinois, but is based upon an arbitrary minimum franchise tax determined by the total issued capital stock or your orator, which, when applied, results in a tax on your orator, larger than the tax imposed on like business and property within the State of Illinois.

Your orator further shows to your Honors that because of the failure and refusal of your orator to pay said franchise tax as assessed against it, said defendant threatens, intends to and will take steps to revoke and terminate the authority of your orator to do business in the State of Illinois; and institute proceedings to collect said tax and to inforce the penalties provided by said General Corporation Act
11 against your orator, its officers and employees, and that by reason of the duties and powers placed upon the defendant, in and for the collection of said tax and in the enforcement of said penalties, your orator is threatened with great and irreparable injury for which it cannot be adequately compensated at law, and has no adequate remedy at law.

And your orator shows unto your Honors that it cannot obtain relief or protection elsewhere than from your Honors, through the exercise of a writ of injunction to restrain said unlawful acts on the part of the defendant.

And in order that your orator, its officers, employees, and property may be protected against the unlawful and unjustifiable threatened acts and actions of the defendant, your orator respectfully prays:

1. That process of subpoena issue herein, directed to the defendant, Louis L. Emmerson, as Secretary of State of the State of Illinois, directing him to appear and answer the allegations herein contained, but not under oath, answer under oath being hereby expressly waived.

2. That an injunction issue herein, perpetually enjoining the defendant, Louis L. Emmerson, Secretary of State of the State of Illinois, and all successors, employees, attorneys, agents and all persons acting for and under his instructions, from in any form or manner whatsoever assessing against your orator any franchise or license tax whatsoever under the provisions of Section 107 of the General Corporation Act of the State of Illinois, for the year beginning July 1, 1927 and ending June 30, 1928, in excess of the amount of $135.21, or from hereafter at any time assessing any franchise tax against your orator, based on the minimum scale fixed by Section 107 of said Act.

3. That an injunction issue herein, perpetually enjoining the defendant, Louis L. Emmerson, as Secretary of State of the State of Illinois, his successors, empolyees, clerks, agents, attorneys, and all persons acting for or under his instructions, from in any manner whatsoever revoking or taking steps to revoke the certificate of authority of your orator to do business within the State of Illinois, because or on account of the refusal of your orator to pay the Franchise Tax of $1000.00, as aforesaid, or any part thereof in excess of $135.21 assessed by him against your orator.

4. That an injunction issue herein, perpetually enjoining the said defendant, Louis L. Emmerson, as Secretary of State of Illinois, his successors, employees, attorneys, agents and all persons acting for or under his instruction, from hindering or forbidding your orator to transact business in the State of Illinois, or from instituting any proceedings or filing any complaint, either at law or in equity, or in any manner taking any steps whatsoever to inforce any of the penalties, forfeitures or prohibitions against your orator, its officers and employees, on account of the refusal of your orator to pay said franchise tax of $1000.00, aforesaid, or any part thereof, in excess of $135.21, as assessed against it.

5. That a restraining order or a preliminary injunction be issued without delay, directed to Louis L. Emmerson, as

Secretary of State of the State of Illinois, enjoining and restraining him as heretofore herein prayed for.

And for such other and further relief as may appear to be just and reasonable.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
By H. L. BROWNING,
JOSIAH WHITNEL,
Solicitors for Complainant.

J. R. TURNEY.
Counsel for Complainant.

13 State of Missouri, } ss.
City of St. Louis. }

W. A. CONAWAY, first being duly sworn, on oath states, that he is the Tax Agent for the complainant herein; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true. That the reason why this verification is not made by the complainant in person, is, because complainant is a corporation and that this affiant is an officer thereof, viz., the Tax Agent.

W. A. CONAWAY.

Subscribed and sworn to before me this 5th day of July, A. D. 1927.

RAY K. RAMEY,
Notary Public.

(Seal)

My Commission expires Feb. 6, 1931.

Endorsed: Filed Jul. 21, 1927, S. T. Burnett, Clerk.

14 EXHIBIT "A".

Notice—Unless this report is filed prior to March first 10% must be added to the amount of franchise taxes otherwise due, and corporation is also subject to a fine not to exceed $1000.00. Only one copy of report is required to be forwarded to Secretary of State. See that the report is properly executed and corporate and notarial seals affixed before mailing, as failure to do so may necessitate the return of the report and subject the corporation to the above penalties.

Annual Report.

(Use Typewriter in the Execution of This Report)

To Louis L. Emmerson,

Secretary of State of the State of Illinois:

Report of St. Louis Southwestern Railway Company, organized under the laws of the State of Missouri as required under an Act entitled, "An Act in relation to corporations, for pecuniary profit," approved June 28, 1919, in force July 1, 1919, and all acts amendatory thereof.

1. State your name and official position with the corporation. (Whether president, vice-president, secretary, assistant secretary, treasurer, receiver, assignee or trustee.)

W. A. Conaway, Tax Agent.

2. The location of the principal business office of the corporation in the State of Illinois is at No. 505-511 First Nat'l. Bank Bldg., in the City of East St. Louis, County of St. Clair, and the names and residences of the officers and directors of said corporation are as follows:

Names of Officers and Directors.

	Office	Residence	
Name	Number and Street	City	State.
Daniel Upthegrove	President	St. Louis,	Mo.
Paul J. Longua	Secretary	New York,	N. Y.
C. Messick	Treasurer	St. Louis,	Mo.
Edwin Gould	Director	New York,	N. Y.
Charles Hayden	Director	New York,	N. Y.
L. F. Loree	Director	New York,	N. Y.
Winslow S. Pierce	Director	New York,	N. Y.
Paul Rosenthal	Director	"	" "
E. Roland Harriman	Director	"	" "
Daniel Upthegrove	Director	St. Louis,	Mo.
Carl F. G. Meyer	Director	"	" "
F. W. Green	Director	"	" "

Notice—Must give officers and show management of corporation is vested in at leasts three Directors.

3. Has the corporation acquired title to any real estate in securing any debt or liability due it? Ans. No.

4. Give a description of such property, if any has been acquired, and the date of the acquisition and disposal of such property.

None.

5. Has the corporation entered into any illegal pool, trust, agreement, combination, confederation or understanding in restraint of trade in contravention of any Act of this State concerning such matters?

Ans. No.

6. State the amount of Authorized Capital Stock of corporation.

Authorized is $130,000,000.

Issued and outstanding is $36,249,750.00.

Shares of no par value.

No. None.

When a corporation has shares of no par value such shares must be reported separately.

*7. Does the corporation wish to pay a franchise tax upon its entire authorized capital stock?

Ans. No.

*8. In the event that the corporation is assessed a franchise tax upon its entire authorized capitalization, will it be paid promptly?

Ans. .....

Notice.

The information on this perforated rider is for compiling certified list of corporations and must be answered specifically and accurately.

Exact corporate name is St. Louis Southwestern Railway Company Address. St. Louis, Missouri.

Authorized Capital Stock Authorized is $130,000,000.00.

Issued and outstanding is $36,249,750.00.

Number of shares of no par value None.

President Daniel Upthegrove, St. Louis, Missouri.

Secretary Paul J. Longua, New York, N. Y.

9. State briefly the nature of business in which the corporation is actively engaged under its charter at the present time.

State and Interstate transportation of freight, passengers, mail, express and baggage.

10. Give the total value of all the property of the corporation everywhere, specifying:

16 (a) Value of patent rights, licenses, trade-marks, secret processes, copyrights, good will, contracts, or choses in action: Ans. $ None.

(b) Merchandise, raw materials and goods in process of manufacture; Ans. $ None.

(c) Book accounts and notes: Ans. $433,713.62.

(d) Machinery and real estate; Ans. Inc. in road & Equipment. $.....

(e) Stock in other corporations and securities; Ans. $10,740,691.92.

(f) Furniture, fixtures, stationery; Ans. Inc. in road & equipment. $.....

(g) Cash in bank; Ans. $1,583,502.11.

(h) Kinds and amounts of other property, specifying in detail; Ans. $.....

Road & equipment $76,793,697.79.

11. Give the total value of all the property of the corporation located in Illinois, specifying.

(a) Value of the patent rights, trade-marks, secret processes, copyrights, good will, contracts or choses in action; Ans. $ None.

(b) Merchandise, raw materials and goods in process of manufacture; Ans $ None.

(c) Book accounts and notes; Ans. $ None.

(d) Machinery and real estate; Ans. None.

(e) Stock in other corporations and securities; Ans. $15,000.00.

(f) Furniture, fixtures, stationery; Ans. None.

(g) Cash in Bank; Ans. $ None.

(h) Kinds and amounts of other property, specifying in detail; Ans. $.....

Illinois proportion of rolling stock $786,196.00.

12. Give the location of the principal places of business of the corporation in each State, and the amount of business transacted through each, last year, Various stations along line in States of Missouri, Arkansas and Louisiana.

13. State the total business of the corporation transacted everywhere during the past year.

Ans. $18,201,955.32.

17 14. State the total business of the corporation for the past year transacted by it at or from places of business in the State of Illinois.

Ans. $2,868.36.

15. In case of a telegraph, telephone, cable, railroad, or

pipe line company, state the total length of such telegraph, telephone, cable, railroad or pipe line company, wherever located.

940.58.

16. State the length of such telegraph, telephone, cable, railroad, or pipe line company actually located in Illinois. None.

17. From what office are the affairs of the corporation managed? Ans. Daniel Upthegrove, President, Buder Bldg., St. Louis, Mo.

18. To what office or offices are all contracts with the corporation forwarded for final acceptance? Ans. Same as #17.

19. Is the corporation actually transacting business at the present time in the State where it was incorporated? Ans. Yes.

20. At what office or offices are directors and stockholders meetings held?

Ans. Buder Bldg., St. Louis, Mo.

In Witness Whereof, I have hereunto set my hand and caused the seal of said corporation to be affixed this ..... day of February, A. D. 1927.

(Affix Corporate Seal Here)

.....

(*President, Vice-President, Secretary, Assistant Secretary, Treasurer, Assignee, Receiver or Trustee*)

Tax Agent.

State of Missouri }
City of St. Louis } ss.

I, W. A. Conaway, being duly sworn, declare on oath that I am Tax Agent of the corporation mentioned in the foregoing report, and that all the statements therein made are true.

.....

Subscribed and sworn to before me this ..... day of February, A. D. 1927.

.....

(Notarial Seal)

Notary Public.

18 *Corporations having all their tangible property and business in this State are required under the Statute to pay upon their entire authorized capital stock and should

answer paragraphs 7 and 8 in the affirmative, as this will relieve them of the expense and trouble of giving the information called for in paragraphs 10 to 20 inclusive, which would be of no benefit to either the corporation or the State. Other corporations should give the detailed information called for in paragraphs 10 to 20 inclusive, in order that the Secretary of State may be able to ascertain the correct amount of franchise tax and initial fees due from them.

The State of Illinois is entitled to all business transacted by a corporation at or from a place of business in Illinois. The point from which or to which the goods may be shipped is immaterial as the Supreme Court of the United States has repeatedly held that where the business is merely taken as an index to arrive at a lawful tax, such computation is not in contravention of the commerce clause of the Constitution of the United States.

§ 102. * * * The Secretary of State shall on or before the 15th day of January of each year forward to each corporation of record in his office a copy of the forms to be used in making the report specified in this Act, but the failure to send or to receive such forms shall not relieve the corporation from the duty of making such report.

§ 151. If any officer of a corporation required by this Act to make a report under oath to the Secretary of State, shall in such report wilfully and knowingly make any false statement, he shall be guilty of perjury.

§ 153. Any corporation failing to file its annual report within the time required by this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars.

19 EXHIBIT "B".

55th G. A. Senate Bill No. 330 In House. 1927.

1 Reported from Senate May 3, 1927.

2 Read by title ordered printed and to a first reading.

A Bill.

For an Act to amend Sections 4, 28, 80, 92, 96, 97, 101, 105, 106, 107, 112 and 129
of an Act entitled "An Act in relation to corporations for pecuniary profit," approved June 28, 1919; in force July 1, 1919.

Be it enacted by the People of the State of Illinois, represented in the
General Assembly:

Section 1. That Sections 4, 28, 80, 92, 96, 97, 101, 105, 106, 107, 112 and 129
of an Act entitled "An Act in relation to corporations for pecuniary profit,"
approved June 28, 1919; in force July 1, 1919, be amended to read as follows:

Sec. 4. Whenever three or more adult persons, citizens of the United
States of America, at least one of whom shall be a citizen of this State, shall
desire to form a corporation under this Act, they shall sign, acknowledge and
verify the facts set up therein under oath before some officer, competent to
take acknowledgment of deeds, a statement of incorporation setting forth the
following:

(1) The names and postoffice addresses, giving town or city, street and
number of the incorporators;

(2) The name of the proposed corporation;

(3) A clear and definite statement of the object or objects for which it is
formed;

(4) The period of duration;

(5) The location of its principal office in this State, giving town, or city,
street and number, if any;

(6) The number of shares into which the capital stock is to be divided,
whether all or part of the same shall have a par value, and if so the par value
thereof, which shall not be less than five dollars, nor more than one hundred
dollars, per share, and whether all or part of the same shall have no par value,
and if there is to be more than one class of stock created, a description of the
different classes, the number of shares in each class, and the relative rights,
20 interests and preferences each class shall represent;

(7) The names and addresses giving town or city, street and number of the original subscribers to the capital stock, and the amount subscribed and amount paid by each;

(8) The total amount of authorized capital stock having a par value, and the total number of shares of no par value.

(9) The amount of such stock which it is proposed to issue at once and the consideration to be received for such stock which shall not be less than one thousand dollars, all of which must be subscribed;

(10) The payment of at least one-half of the consideration for the capital stock, which it is proposed to issue at once, with a description of the nature and value of property, if any, paid for such capital stock;

(11) The number, names and postoffice addresses of the directors by street and number, at least one of whom shall be a resident of this State, and the term for which elected;

(12) In the case of a building corporation, a specific and definite description of the site for such building;

(13) Any other provisions, not inconsistent with law, for the regulation of the business and the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders or any class or classes of stockholders. Such statement shall be filed in duplicate in the office of the Secretary of State on forms prescribed and furnished by the Secretary of State.

Sec. 28. Whenever stock, not previously reported to the Secretary of State as issued, has been issued within the authorized limit fixed by an approved statement of incorporation or certificate of increase in capital stock of a do-

mestic or foreign corporation, including railroads, a statement subscribed and sworn to by the president or vice president, and attested by the secretary or by an assistant secretary, or other officer in case of a foreign corporation, shall be filed in the office of the Secretary of State within thirty days after the issuance of such additional stock pursuant to authorization thereof by the board of directors, which statement shall set forth:

(1) The total amount of the capital stock authorized by the articles of incorporation.

(2) A statement of the additional stock issued since the issuance of certificate of incorporation, the last certificate of increase in capital stock, or the filing of the last statement, and the manner in which it is paid up, with a description and valuation of property, if any, received in payment of such stock and that of the capital stock then issued at least one-half has been paid in, in money or property. Upon receipt of such statement the Secretary of State shall examine the same and if it is in conformity with the provisions of this Act and is accompanied by the fees hereinafter required, he shall endorse thereon the word "filed." No issuance of stock subsequent to the granting of license or certificate of incorporation or increase in capital stock shall be lawful, until the statement required by this section shall have been filed in the office of the Secretary of State and the fees hereinafter required have been paid to him, and the person to whom such stock was issued may recover from the corporation the amount paid thereon together with interest and his reasonable attorney fees.

Promissory notes shall not be accepted in payment or part payment of

stock issued in pursuance of any of the provisions of this Act.

Sec. 80. Each foreign corporation organized for pecuniary profit (except banking, insurance, building and loan and surety companies) not now licensed to do business in this State, shall, before it transacts any business or maintains an office in this State, procure a certificate of authority therefor from the Secretary of State. No certificate shall issue to any foreign corporation authorizing it to transact business in this State until the same amount is paid on each share of stock issued or to be issued as is required by like corporations organized under the laws of this State.

Sec. 92. The certificate of authority of a foreign corporation, subject to the provisions of this Act, may be revoked by the Secretary of State;

(1) Upon failure of an officer, director or manager, to whom interrogatories are propounded, to answer the same fully and to file such answer in the office of the Secretary of State within thirty days after the mailing of the same;

(2) If such corporation is transacting no business in Illinois and has no tangible property in this State;

(3) If the answer to interrogatories propounded by the Secretary of State discloses, or if the fact is otherwise ascertained, that the proportion of the capital stock of such corporation represented in this State is greater than the amount theretofore paid upon by such corporation and the deficiency in such fees is not paid within thirty days of the receipt of a notice sent by mail to the president and secretary, or to the statutory agent of such corporation of record in this State, or to the Attorney filing the interrogatories for such corporation

or is not paid within such extension of time as may be granted by the Secretary of State;

(4) Upon failure of such foreign corporation to keep on file in the office of the Secretary of State duly authenticated copies of each instrument amending its charter;

(5) Upon failure of such foreign corporation to appoint and maintain an agent in this State upon whom service of legal process may be had;

(6) Upon failure, neglect or refusal to file an annual report as required by this Act, or upon failure, neglect or refusal to pay the franchise tax assessed against it on or before the thirty-first day of July of the year in which such franchise tax becomes due and payable;

(7) Upon failure, neglect or refusal to file a certificate of issuance of stock and the payment of the fees required by this Act.

Sec. 96. The Secretary of State shall charge and collect an initial fee of one-twentieth of one percentum upon the amount of the capital stock which the corporation, has issued or it proposes to issue at once, but in no case shall such fee be less than twenty dollars, and a like fee of one-twentieth of one percentum upon filing a certificate of any subsequent issue or increase of capital stock and in addition thereto the same fee as that required for filing other certificates of amendment. In the event that the corporation has capital stock of no par value, its shares, for the purpose of fixing the fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares. Each public utility corporation, including railroads, shall pay to the Secretary of State the same fees as are required to

be paid for incorporation by other corporations organized for pecuniary profit.

Sec. 97. The Secretary of State shall also charge and collect the following fees:

(1) For filing and/or issuing a certificate of amendment to the articles of incorporation twenty dollars;

(2) For furnishing certified copy of any paper relating to corporation, twenty-five cents per folio of one hundred words and one dollar for certificate and seal;

(3) For filing certificate of dissolution, one dollar;

(4) For recording any railroad agreement, twenty-five dollars, and for furnishing a certified copy thereof, twenty-five dollars;

(5) For filing certificate of extension of corporate existence or merger or consolidation of corporation he shall charge the same fees as required for the organization of a new corporation.

(6) For issuing amended certificate of incorporation before completing the organization of a corporation, twenty dollars;

(7) For filing and issuing a certificate of change of location or place of business office five dollars.

Sec. 101. Each foreign corporation for pecuniary profit, other than an insurance company or building and loan company, in addition to the annual franchise fees and taxes hereinafter provided, shall pay to the Secretary of State for its certificate of authority to do business in Illinois the same fees provided by This Act to be paid by a similar corporation incorporated under the laws of this State. Each foreign corporation heretofore or hereafter admitted to do business in this State, shall also pay for increases in the amount of capital stock re-

presented in Illinois, for extensions of existence, consolidations, mergers, and for filing amendments the same fees required to be paid by corporations organized under the laws of this State. All such fees shall be based upon the proportion of its issued capital stock represented by business transacted and property located in Illinois. Whenever it shall appear that the amount of capital stock represented in Illinois is greated than the amount theretofore paid upon by any foreign corporation, such corporation, before it shall continue to transact business in Illinois, shall pay to the Secretary of State upon such excess the same fees that a domestic corporation must pay upon an increase in capital stock equal to the amount of such excess.

If a foreign corporation has a capital stock of no par value, its shares, for the purpose of estimating the amount of fees and taxes to be paid hereunder, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares.

Sec. 105. Each corporation for profit, including railroad, except insurance companies, heretofore or hereafter organized under the laws of this State or admitted to do business in this State, and required by this Act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred Dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in this State, but in no event shall the amount of such license fee or franchise tax be less than that required by this Act of corporations having no property or business in this State.

In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares.

Sec. 106. In ascertaining the amount of the issued capital stock represented by business transacted and property located in this State, the sum of the business of any foreign or domestic corporation transacted in this State and the total property of such corporation located within this State shall be divided by the sum of the total business of the corporation, and the total property of the corporation wherever situated.

Sec. 107. In case it appears from the annual report that the corporation has no property located in this State, and is transacting no business in this State, the following fees shall be paid annually to the Secretary of State as an annual franchise tax; All such corporations having issued capital stock of $50,000 or less shall pay an annual fee of $10; corporations having issued capital stock of more tha $50,000 but not exceeding $200,000 shall pay an annual fee of $15; corporations having issued capital stock of more than $200,000 but not exceeding $500,000 shall pay an annual fee of $20; corporation having issued capital stock of more than $500,000 but not exceeding $1,000,000 shall pay a fee of $50; corporations having issued capital stock of more tha $1,000,000 but not exceeding $10,000,000 shall pay a fee of $200; corporations having issued capital stock of more tha $10,000,000, but not exceeding $20,000,000 shall pay a fee of $500; and all corporations having issued capital stock in excess of $20,000,000 shall pay an annual fee of $1,000.

In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares.

Sec. 112. Between the first day of February and the fifteenth day of June of each year, the Secretary of State shall mail a notice in writing to each corporation against which a tax is assessed, notifying such corporation of the amount of the franchise tax assessed against it for the year next ensuing, commencing on July first, and the amount found by the Secretary of State to be due upon an increase of capital stock of a foreign corporation represented in this State, and that objections, if any, to such assessment will be heard by the officer making such assessments, upon request by corporation on a day not later than the twenty-fifth day of June, provided upon proper showing to the Secretary of State that the failure to request a hearing before that date was due to the absence or sickness on the part of some officer of the corporation, the Secretary of State may grant a hearing after that date, but in such case an additional penalty of 5% shall be collected upon the franchise taxes otherwise found to be due the Secretary of State. Such notice shall further state that the tax herein assessed is payable to the officer making the assessment on July first after the date of the notice. The notice required by this section shall be mailed to the corporation addressed to its post office address as shown by the records in the office of the Secretary of State. A failure to receive the notice

mentioned in this section shall not relieve a corporation of the obligation to pay the annual franchise taxes nor shall it invalidate the assessment of the tax.

Sec. 129. In addition to all other fees required by law to be paid, the Secretary of State shall collect in advance from corporations subject to a franchise tax, annual franchise taxes as follows:

(1) If a corporation is organized, or admitted to do business in this State, or its capital stock issued or increased;

(a) Between July first of any year (after the year 1919), and September thirtieth of the same year a franchise tax equal to the full amount of the annual franchise tax;

(b) Between October first of any year (after the year 1919) and December thirty-first of the same year a franchise tax equal to three-fourths of the annual franchise tax;

(c) Between January first of any year and the last day of February of the same year, a franchise tax equal to one-half of the annual franchise tax;

26 (d) Between March first of any year and June thirtieth of the same year, a franchise tax equal to one and one-third of the annual franchise tax.

The franchise tax required by Paragraphs "a", "b" and "c" shall be for authority of the corporation to carry on its corporate business until the thirtieth day of June following the date of payment of such tax. The franchise tax required by paragraph "d" of existing corporations increasing their capital stock shall be for authority of the corporation to employ its increased capitalization in this State until the thirtieth day of the second June following, but such corporation shall still be liable to pay its annual franchise tax upon its

old capital stock in July following in the same manner as required of other corporations not increasing their capital stock. The fees required in this Section shall be based upon the per centum of issued capital stock as evidenced by latest annual report required to be filed under the provisions of this act, if any.

The word "between" as used in this Section shall include both dates specified.

Sec. 2. Whereas, the Supreme Court of this State has held that certain Sections of the General Corporation Act, which based the fees on the authorized capital stock are unconstitutional as to foreign corporations;

Whereas, under the decision of the Supreme Court the Secretary of State will not be able to collect the fees from corporations to which the State is entitled and further, that all of the annual franchise tax provisions of said act are in danger of being invalidated unless said sections are amended, and,

Whereas, the Secretary of State is, under the provisions of Section 112 of the aforesaid act, obliged to mail notice between the first day of February and the fifteenth day of May, in writing, to each corporation against which a franchise tax or fee is assessed, notifying such corporation of the amount of franchise tax or fee assessed against it for the year next ensuing, commencing on July first, and,

Whereas, unless this Act becomes effective on or before May fifteenth the State will lose the fees from corporations to which the State is justly entitled,

Therefore, an emergency exists and this Act shall take effect and be in full force from and after its passage.

Endorsed: Filed Jul. 21, 1927, S. T. Burnett, Clerk.

ued July 21, 1928.

27 And afterwards, to wit: on the 21st day of July, A. D. 1928, there was issued by the clerk of said court, a certain Chancery Subpoena, which said Chancery Subpoena together with the Marshal's Return thereon, was and is in the words and figures, following, to wit:

28 United States of America
Southern District of Illinois } ss.
Southern Division

The United States of America To Louis L. Emmerson, Secretary of State of the State of Illinois, Greeting:

We Command You and Every of You, That you appear before our Judge of our District Court of the United States of America, for the Southern District of Illinois, at Springfield, in said District, on the 10th day of August, A. D. 1927, at 9 o'clock A. M., to answer the bill of complaint of St. Louis Southwestern Railway Company, a Corporation, this day filed in the office of the Clerk of said court in the City of Springfield then and there to receive and to abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Southern District of Illinois to execute.

Witness, the Honorable Louis FitzHenry, Judge of the District Court of the United States for the Southern District of Illinois, at Springfield, aforesaid, this 21st day of July, in the year of our Lord one thousand nine hundred and twenty-seven, and of our Independence the fifty-second year.

S. T. BURNETT,
Clerk.

(Seal)

Memorandum

The above-named defendant is notified that unless he and each of them shall file his answer or other defense in the office of the Clerk of said Court, at Springfield aforesaid, on or before the twentieth day after service of this process, excluding the day of such service, the bill of complaint filed herein will be taken against him as confessed, and a decree entered accordingly.

S. T. BURNETT,
Clerk.

United States of America
Southern District of Illinois } ss.
Southern Division.

I duly executed the within writ of service upon the within named Louis L. Emmerson by reading the same and delivering a true copy thereof to A. C. Margrave, Chief Clerk Corporation department, at Springfield, Sangamon County, Illinois, this 23rd day of July, A. D. 1927. The within named Louis L. Emmerson, Secretary of State of the State of Illinois not found in this district.

C. W. CUSHING,
U. S. Marshal.
By W. L. MOODY,
Deputy.

Marshal's Fees $2.06.

(Endorsed) Chancery Subpoena. Filed July 25, 1927. S. T. Burnett, Clerk.

29 And afterwards, to wit: on the 22nd day of July, A. D. 1927, there was filed in the office of the clerk of said court, a certain motion for temporary restraining order, which said motion was and is in the words and figures, following, to wit:

30 * * (Caption) * *

MOTION FOR TEMPORARY RESTRAINING ORDER.

Now comes the complainant in the above entitled cause and moves for a temporary restraining order in accordance with the prayer of the Bill of Complaint filed herein.

H. L. BROWNING,
JOSIAH WHITNEL,
Attorneys for Complainant.

J. R. TURNEY,
Of Counsel.

Endorsed: Filed Jul. 22, 1927, S. T. Burnett, Clerk.

31 And afterwards, to wit: on the 22nd day of July, A. D. 1927, the following further proceedings were had in said court in said cause and were entered of record to wit:

32 • • (Caption) • •

ORDER.

Whereas, the Bill of Complaint in the above entitled cause prays that a temporary restraining order be entered, pending the hearing on an application for an interlocutory or preliminary injuction; and the complainant has, on this the 22 day of July, A. D. 1927, moved for such temporary restraining order, and,

Whereas, after examining and considering the verified Bill of Complaint, it appears that the complainant will suffer irreparable injury unless said temporary restraining order be entered in accordance with said prayer and motion, in that, after August 1, 1927, the authority of said complainant to do business in Illinois would be subject to revocation unless said restraining order be entered, and the complainant and its employees would thereupon be subject to divers penalties and forfeitures, and,

Whereas, the defendant, by his Counsel, is present in Court at the time of said application and motion for a temporary restraining order is made,

And it appearing to the Court that cause exists for the granting of said restraining order, pending a hearing on
33 and determination of the application for an interlocutory injunction in this cause.

It Is Therefore Ordered that the defendant, Louis L. Emmerson, Secretary of State of the State of Illinois, his representatives, agents, employees and all persons acting under or for him, be, and they are hereby enjoined, pending the consideration and determination of said application for an interlocutory injunction, from in any manner whatsoever revoking or taking steps to revoke the certificate of authority of the St. Louis Southwestern Railway Company to do business within the State of Illinois, because or on account of the refusal and failure of said St. Louis Southwestern Railway Company to pay an annual license fee or franchise tax assessed against it by said defendant, for the year beginning July 1, 1927 and ending June 30, 1928.

It Is Further Ordered that the defendant, Louis L. Em-

merson, Secretary of State of the State of Illinois, his agents, employees and all persons acting under him be enjoined, during said time, for hindering or forbidding the St. Louis Southwestern Railway Company from transacting business in the State of Illinois or from instituting any proceedings or filing any complaint, and from requesting the Attorney General of the State of Illinois, or his associates, to institute such proceeding, or in any manner taking any steps whatsoever, to enforce any of the penalties, forfeitures or prohibitions against said St. Louis Southwestern Railway Company, provided for on account of its refusal to pay such license or franchise tax.

It Is Further Ordered by the Court, that the complainant give bond, to be approved by the Clerk of the Court, in the penal sum of Two Thousand ($2000.00) Dollars, conditioned upon the payment of all costs and damages suffered by the defendant, if it shall be determined that he was wrongfully enjoined.

34

LOUIS FITZHENRY
Judge.

Endorsed: Filed Jul. 22, 1927, S. T. Burnett, Clerk.

35 And afterwards, to wit: on the 4th day of November, A. D. 1927, there was filed in the office of the clerk of said court, a certain Motion to Dismiss, which said Motion to Dismiss was and is in the words and figures, following to wit: Filed Nov. 4, 1927.

36 • • (Caption) • •

And now comes the above named defendant, by Oscar E. Carlstrom, Attorney General of the State of Illinois, his attorney, and moves the Court to dismiss the bill of complaint filed herein for want of equity, and to grant such other and further relief in the premises as may be just.

OSCAR E. CARLSTOM,
Attorney General of the State of Illinois
Attorney for Defendant

B. L. CATRON,
Assistant Attorney General
Of Counsel.

Endorsed: Filed Nov. 4, 1927, S. T. Burnett, Clerk.

d May 14. 28.

37 And afterwards, to wit: on the 14th day of May, A. D. 1928, there was filed in the office of the clerk of said court, a certain Memorandum of Views of the Court, which said Memorandum of Views, was and is in the words and figures, following, to wit:

38 * * * (Caption) * *

MEMORANDUM.

Plaintiff is a railroad corporation, organized under the laws of Missouri, with a capital stock of $36,249,750. Of this total capital stock, .00746% is represented by property owned and business done in the State of Illinois, as shown by the corporation's annual report, filed for the year 1927, as required by law, with the Secretary of State of Illinois. In extending the corporation franchise tax under the Illinois Corporation Act, the plaintiff corporation was assessed $1,000, being the minimum tax provided by § 107 of said Act.

Plaintiff alleges the tender and willingness to pay a tax of $135.21, the amount it claims due from it under § 105 of the Act, which provides a tax upon foreign corporations based upon the property owned in Illinois and business done in Illinois. Plaintiff seeks to enjoin the defendant from invoking any of the penalties and forfeitures for a failure to pay the tax as assessed and levied, upon the ground that § 107 of the Illinois Corporation Act, as applied to plaintiff, is illegal and violates plaintiff's constitutional rights. Plaintiff complains of the Illinois statute as follows:

1. It unreasonably interferes with and directly burdens interstate commerce;

39 2. It denies plaintiff the equal protection of the law; and,

3. Deprives it of property without due process. These assignments are based upon plaintiff's conclusion that its tax should have been assessed and extended under § 105 of the Corporation Act, when in truth and in fact, the Secretary of State extended it under § 107, which plaintiff claims is unconstitutional and void.

Defendant moves to dismiss plaintiff's bill.

The two sections of the Illinois Statute, as amended and in force at the time in question and involved here, are as follows:

"Section 105. Each corporation for profit, including rail-

roads, except insurance companies, heretofore or hereafter organized under the laws of this State or admitted to do business in this State, and required by this Act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and properly located in this State, but in no event shall the amount of such license fee or franchise tax be less than that required by this Act of corporations having no tangible property or business in this State.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

"Section 107. In case it appears from the annual report that the corporation has no property located in this State, and is transacting no business in this State, the following fees shall be paid annually to the Secretary of State as an annual franchise tax: All such corporations having issued capital stock of $50,000 or less shall pay an annual fee of $10; corporations having issued capital stock of more than $50,000 but not exceeding $200,000 shall pay an annual fee of $15; corporations having issued capital stock of more than $200,000 but not exceeding $500,000 shall pay an annual fee of $20; corporations having issued capital stock of more than $500,000 but not exceeding $1,000,000 shall pay a fee of $50; corporations having issued capital stock of more than $1,000,000 but not exceeding $10,000,000 shall pay a fee of $200; corporations having issued capital stock of more than $10,000,000 but not exceeding $20,000,000 shall pay a fee of $500; and all corporations having issued capital stock in excess of $20,000,000 shall pay an annual fee of $1,000.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

40 The merits of the controversy raised by plaintiff's bill and defendant's motion to dismiss, involve the construction of Sections 105 and 107 of the Illinois Corporation Act, above quoted. The contention of plaintiff is that its tax should be levied under § 105, because it has property in the state and is doing business, and its tax should be based upon the proportion that the property of plaintiff in the state and its business done in the state bears to the total property and busi-

May 14, 28. 37 And afterwards, to wit: on the 14th day of May, A. D. 1928, there was filed in the office of the clerk of said court, a certain Memorandum of Views of the Court, which said Memorandum of Views, was and is in the words and figures, following, to wit:

38 * * (Caption) * *

MEMORANDUM.

Plaintiff is a railroad corporation, organized under the laws of Missouri, with a capital stock of $36,249,750. Of this total capital stock, .00746% is represented by property owned and business done in the State of Illinois, as shown by the corporation's annual report, filed for the year 1927, as required by law, with the Secretary of State of Illinois. In extending the corporation franchise tax under the Illinois Corporation Act, the plaintiff corporation was assessed $1,000, being the minimum tax provided by § 107 of said Act.

Plaintiff alleges the tender and willingness to pay a tax of $135.21, the amount it claims due from it under § 105 of the Act, which provides a tax upon foreign corporations based upon the property owned in Illinois and business done in Illinois. Plaintiff seeks to enjoin the defendant from invoking any of the penalties and forfeitures for a failure to pay the tax as assessed and levied, upon the ground that § 107 of the Illinois Corporation Act, as applied to plaintiff, is illegal and violates plaintiff's constitutional rights. Plaintiff complains of the Illinois statute as follows:

1. It unreasonably interferes with and directly burdens interstate commerce;

39 2. It denies plaintiff the equal protection of the law; and,

3. Deprives it of property without due process. These assignments are based upon plaintiff's conclusion that its tax should have been assessed and extended under § 105 of the Corporation Act, when in truth and in fact, the Secretary of State extended it under § 107, which plaintiff claims is unconstitutional and void.

Defendant moves to dismiss plaintiff's bill.

The two sections of the Illinois Statute, as amended and in force at the time in question and involved here, are as follows:

"Section 105. Each corporation for profit, including rail-

roads, except insurance companies, heretofore or hereafter organized under the laws of this State or admitted to do business in this State, and required by this Act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and properly located in this State, but in no event shall the amount of such license fee or franchise tax be less than that required by this Act of corporations having no tangible property or business in this State.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

"Section 107. In case it appears from the annual report that the corporation has no property located in this State, and is transacting no business in this State, the following fees shall be paid annually to the Secretary of State as an annual franchise tax: All such corporations having issued capital stock of $50,000 or less shall pay an annual fee of $10; corporations having issued capital stock of more than $50,000 but not exceeding $200,000 shall pay an annual fee of $15; corporations having issued capital stock of more than $200,000 but not exceeding $500,000 shall pay an annual fee of $20; corporations having issued capital stock of more than $500,000 but not exceeding $1,000,000 shall pay a fee of $50; corporations having issued capital stock of more than $1,000,000 but not exceeding $10,000,000 shall pay a fee of $200; corporations having issued capital stock of more than $10,000,000 but not exceeding $20,000,000 shall pay a fee of $500; and all corporations having issued capital stock in excess of $20,000,000 shall pay an annual fee of $1,000.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

40 The merits of the controversy raised by plaintiff's bill and defendant's motion to dismiss, involve the construction of Sections 105 and 107 of the Illinois Corporation Act, above quoted. The contention of plaintiff is that its tax should be levied under § 105, because it has property in the state and is doing business, and its tax should be based upon the proportion that the property of plaintiff in the state and its business done in the state bears to the total property and busi-

ness of the corporation which is represented by the entire capital stock. That proportion is a very small one and if its tax were computed according to the provisions of § 105, disregarding, however, a very material provision of the statute, it would be deemed by plaintiff reasonable and not discriminatory; but that the Secretary of State, having assessed plaintiff a tax under § 107, has taxed it out of all proportion to what it considers an approximate tax under § 105 and entirely disregards the amount of business transacted and the property of the tax payer in the State.

The two statutes here involved attempt to tax two entirely different things. Section 107 is clearly "a franchise tax" while Section 105 provided a tax upon "the exercise of the franchise" and does not become operative until the business done and property used in the exercise of the franchise, measured by the standards provided in § 105, produce an amount equal to or greater than the amount of the mere franchise tax provided in § 107. When that point is reached in the exercise of the franchise, then § 107 ceases to be operative and § 105 controls the amount.

Section 107, it will be noted, applies to a corporation which "has no property located in this State, and is transacting no business in this State". However, § 105, taxing the exercise of the franchise, contains the provision, "but in no
41 event shall the amount of such license fee or franchise tax be less than that required by this Act of corporations having no tangible property or business in this State." In other words, so far as the provisions of § 105 are concerned, they do not apply and are not operative unless the franchise is exercised to the extent necessary to supercede the operation of § 107.

Where a corporation does so small an amount of business and uses so small a proportion of its property in the State as not to produce a tax under § 105 equal to or greater than the franchise tax provided in § 107, it is treated by the public policy of the state for taxing purposes as having no property in the State and doing no business in the State.

To sustain plaintiff's position, it is necessary to hold that the State has no power to enact a corporation taxing statute of the character of § 107.

Plaintiff relies upon the expression of the United States Supreme Court in *International Paper Co.* v. *Massachusetts*, 246 U. S. 135, 38 S. Ct. 292. That was a suit by a New York corporation to recover the amount of an excise tax assessed against it in Massachusetts, for the year 1915 and paid under

protest, the right to recover being predicated on the asserted invalidity of the tax under the commerce clause of the Constitution (Art. 1, § 8, Cl. 3) and the due process clause of the 14th Amendment. In that case, the Massachusetts statute required the Taxing Commissioner to levy an excise tax upon the coming in of the annual report of a foreign corporation of 1/50 of 1% of the par value of its authorized capital stock, not to exceed $2,000. Another statute, referring to the one just above mentioned (§ 56), provided (St. 1914, C. 724, § 1) for the collection of another tax at the time of the filing of its annual certificate of condition, from the same corporation, an excise tax of 1/100 of 1% of the par value of its
42 authorized capital stock in excess of $10,000,000. The plaintiff was the owner of 23 paper mills, one in Massachusetts and 22 in other states. The entire 23 paper mills, business, good will, etc., of the corporation was represented by the entire authorized capital stock, whether in the state or out of the state. In other words, the statutes of Massachusetts involved in that case made a plain tax levy upon the entire property of the foreign corporation.

After reviewing all of the authorities, the Supreme Court, in the last paragraph of the opinion, gives its final conclusion in these words:

"What has been said sufficiently shows the tax in question should have been declared unconstitutional and void as placing a prohibited burden on interstate commerce and laid (a tax) on property of a foreign corporation located and used beyond the jurisdiction of the state."

The Massachusetts statutes were plain excise statutes, levied upon all of the authorized capital stock of the corporation, and clearly were unconstitutional for that reason. In discussing what the Court had previously said in *Western Union Telegraph Co.* v. *Kansas,* 216 U. S., 1, 30 S. Ct. 190, the Court said:

"This court unanimously pronounced the Texas statute invalid as placing 'direct burdens on interstate commerce' and taxing 'property and rights which were wholly beyond the confines of the state and not subject to its jurisdiction."

Do the Illinois statutes here involved come within the rules discussed in the International Paper Co. case, supra; that is, do they lay an unlawful burden on interstate commerce or attempt to tax property outside of the jurisdiction of the state, or both?

The rule is established by other decisions of the Court that a graduated franchise tax which does not vary in direct pro-

portion to the authorized or issued capital stock of a corporation, and which is limited to a reasonable maximum amount, does not violate the commerce clause of the Federal Constitution, or the due process or equal protection clause of
43 the 14th Amendment. Section 105 certainly cannot be held to be an attempt to unduly burden interstate commerce, because the tax provided in that section is limited to the business done and property used in the state, and is reasonable.

Plaintiff's serious complaint, however, is concerning § 107, whereby it claims the State of Illinois discriminates against it and charges it a greater franchise tax proportionately than it does other foreign corporations securing equal privileges from the State; that is, the total property owned and business done by plaintiff in Illinois during the year in question, amounted to $789,064.36; its capital stock, represented by such property and business, amounted to $270,423. In other words, it claims $270,423 of plaintiff's capital (the total amount being $36,249,750), or, .00746% of its issued stock. It also challenges the power of Illinois to assess a privilege tax or fee on any portion of its capital stock other than the proportion of the capital stock represented by the business done and the property used in the State.

It must be borne in mind that under the two sections of the Ililinois statutes here involved, unless the business done and property used is of sufficient volume and quantity to produce a tax at least equal in amount to the franchise or privilege tax fixed in § 107, then it is to be treated as if no business was done and no property had been used, and the franchise tax assessed accordingly.

The power of Illinois to levy a franchise, or privilege tax, or an entrance tax, as it is called in some of the statutes, is settled by *General Railway Signal Co.* v. *Virginia*, 246 U. S. 450, 38 S. Ct., 460. In that case, Mr. Justice McReynolds, speaking for the Court, said:

"Section 38a, c.53, Acts of Virginia 1910 (copied in margin) requires every foreign corporation with capital over one million and not exceeding ten million dollars when it obtains a certificate of authority to do local business to pay a fee of one thousand dollars. Inspection of the state shows that prescribed fees do not vary in direct proportion to
44 capital stock and that a maximum is fixed. In the class to which plaintiff in error belongs the amount specified is one thousand dollars and, under all the circumstances, we cannot say this is wholly arbitrary or unreasonable."

Section 107 of the Illinois Act applies to all corporations which have no property and transact no business, in the State. It seems to have been designed to cover the situation of foreign corporations making application to qualify for the purpose of receiving grants to exercise their franchises in the State of Illinois which do not exercise those franchises, but are the owners of the right and privilege to do so to whatever extent they may desire, within the law.

It is true the situation in which plaintiff finds itself and which gives rise to its very earnest complaint is a pronounced and direct illustration of the peculiar situations which may arise. Here is a railroad corporation with an immense capital stock, aggregating almost forty millions. It makes application to the proper officers of the State Government to grant it the right to exercise its franchise in the State of Illinois. When it qualifies, it asks for permission to operate a railway franchise. The value of the franchise necessarily bears a most legitimate relation to the amount of capital stock to be used in connection with the exercise of the franchise. When the right was granted, plaintiff, by its qualification under the Illinois law, was given the right to use just as much or just as little of its capital stock in the exercise of its franchise as it saw fit. Manifestly, the legislature could not anticipate, nor could the ministerial officers granting the privilege know, the exact amount of capital stock that the foreign corporation sought to use under the grant. This Court does not believe it was either arbitrary or unreasonable for the State to exact a maximum amount which should be paid by the foreign corporation for the privilege granted it by reason of its qualification under the laws of Illinois.

45 When the St. Louis Southwestern Railway Company made application through the Secretary of State for permission to enter the State and exercise its franchise as a railway company with a large capital stock, and when that application was granted, the effect of the allowance of the prayer of plaintiff amounted to the granting of a franchise by the State of Illinois to plaintiff. The valuable rights which thereupon accrued to it were property of the highest character, and it is these valuable rights, which belonged to the State, and, which were given to plaintiff to use, which the State sought to tax in the manner and amount prescribed in § 107.

Because the capital stock of the corporation is one of the elements used by the statute in computing the amount of the franchise tax, plaintiff concludes it is in effect a tax upon all

of the physical property of plaintiff corporation, more than ninety-nine per cent of which is outside of the State of Illinois. If the tax levied under § 107 was a tax upon property of a foreign corporation outside the State, then the rules announced in *International Paper Co.* v. *Massachusetts, supra,* would prevail and the statute would be unconstitutional. However, such is not the case, for § 107 is clearly designed to tax the holders of valuable grants of privileges made by the State to those corporations which voluntarily make application for them and bring themselves within the law to the extent that the grant becomes effective.

The tax is made substantial and it is the duty of the Courts to presume that in fixing the amount of the franchise tax, the legislature had good and sufficient reasons for making it so. And in devising an uniform method for the ascertainment of the tax, it was entirely reasonable that the financial ability of the applicant corporation should bear a rational relation to the value of the rights granted. It is also
46 reasonable for the legislature to fix the amounts of the several taxes provided for in § 107 at such a sum as would have a tendency to discourage the holding of franchises of great value without them being exercised for the benefit of the public.

Plaintiff complains that it is discriminated against because another corporation with an issued capital stock of $270,423, and having all its property and business in Illinois, would be required to pay a tax of but $135.21 yet the State of Illinois insists upon plaintiff paying a sum of $1000, for doing the same amount of business and having the same amount of property in the State of Illinois. It similarly complains because another foreign corporation, with a capital stock of $1,000,000, and $270,423 of that capital represented in Illinois, would pay only $135.21, while plaintiff is required to pay $1,000.

The answer to this complaint is that if plaintiff had a capital stock of $1,000,000, and did the amount of business which it has done in this State, it, too, would be required to pay only $135.21.

The provision in § 105, " * * * but in no event shall the amount of such license fee or franchise tax be less than that required by this Act of corporations having no tangible property or no business in this State", might be treated as either a minimum tax or a provision that the requirements of § 105 would not apply until after sufficient business had been transacted and property of the corporation used in the

State to warrant assessing under its provisions a tax equal to or greater than the tax provided under the provisions of § 107. The effect is to regard the exercise of a franchise so slightly that it would not be considered as having been exercised at all.

Counsel for plaintiff especially urge upon the Court this language used in *General Railway Signal Co.* v. *Virginia, supra;*

47 "It seems proper, however, to add that the case is along the border line."

Preceding the above sentence is the following:

"Considering what we said in (citing a number of decisions of the Court) the two characteristics of the statute just referred to, must be regarded as sufficient to save its validity."

The two characteristics referred to by Mr. Justice McReynolds are: (1) That the prescribed fees do not vary in direct proportion to capital stock and that a maximum is fixed; (2) In the class to which plaintiff in error belongs the amount specified is $1,000 and "under all the circumstances, we cannot say this is wholly arbitrary or unreasonable."

So, in this case, we conclude that the case made out by plaintiff's bill may also be along the border line, but the taxing statutes here involved, possessing the two characteristics referred to in the *General Railway Signal Co.* case, *supra,* must be regarded as sufficient to have their validity.

Defendant's motion to dismiss will be allowed and an order to that effect may be prepared and submitted.

Endorsed: Filed May 14, 1928, S. T. Burnett, Clerk.

48 And afterwards, to wit: on the 7th day of June, A. D. 1928, the following further proceedings were had in said court in said cause and were entered of record to wit: Entered June 1928.

49 * * (Caption) * *

This cause coming on to be heard upon the motion of the defendant to dismiss the bill of complaint in said cause for want of equity, and the Court having heard the arguments of counsel for the respective parties thereon, and being now fully advised in the premises, upon consideration thereof, doth find that said motion should be allowed.

It Is Therefore Ordered, Adjudged and Decreed by the

Court that the said motion of the defendant to dismiss the said bill of complaint herein be, and the same is hereby allowed, and the said bill of complaint is hereby dismissed for want of equity, and the temporary restraining order heretofore entered herein is hereby set aside and dissolved, and the plaintiff is ordered to pay the costs incurred herein within thirty days from the date hereof.

Enter:

LOUIS FITZHENRY
Judge.

Endorsed: Filed Jun. 7, 1928, S. T. Burnett, Clerk.

Filed June 21, 1928.

50 And afterwards, to wit: on the 21st day of June, A. D. 1928, there was filed in the office of the clerk of said court, a certain Exception to holding and order of the court, which said Exception was and is in the words and figures, following, to wit:

51 * * (Caption) * *

Now comes the plaintiff, St. Louis Southwestern Railway, a corporation, by Josiah Whitnel and H. L. Browning, its Solicitors, and excepts to the holding and Order of Court entered herein, granting the motion of defendant to dismiss its Bill of Complaint, dissolving the Temporary Restraining Order heretofore granted and dismissing its Bill of Complaint, for want of equity, and prays the Court to allow it an Exception on account thereof.

JOSIAH WHITNEL
H. L. BROWNING

Exception allowed this 21st day of June, A. D. 1928.

FITZHENRY
Judge.

Endorsed: Filed Jun. 21, 1928, S. T. Burnett, Clerk.

52 And afterwards, to wit: on the 21st day of June, A. D. 1928, there was filed in the office of the clerk of said court, a certain petition for appeal, which said petition for appeal was and is in the words and figures, following, to wit:

53 • • (Caption) • • Filed June 1 1928.

PETITION FOR APPEAL.

The plaintiff, St. Louis Southwestern Railway Company, conceiving itself aggrieved by the Order and Decree made and entered on the 8th day of June, A. D. 1928, dismissing plaintiff's Bill of Complaint and setting aside and dissolving the Temporary Restraining Order heretofore entered in said cause, does hereby appeal from said Orders and Decrees, to the United States Circuit Court of Appeals, for the Seventh Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said Orders were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

JOSIAH WHITNEL
H. L. BROWNING.

The foregoing petition is allowed this 21st day of June, 1928, as per Order on file.

LOUIS FITZHENRY
Judge.

Endorsed: Filed Jun. 21, 1928, S. T. Burnett, Clerk.

54 And afterwards, to wit: on the 21st day of June, A. D. 1928, there was filed in the office of the clerk of said court, a certain Assignment of Errors, which said Assignment of Errors is in the words and figures, following, to wit: Filed June 21 1928.

55 • • (Caption) • •

ASSIGNMENT OF ERRORS.

Now on the 20th day of June, A. D. 1928, comes the plaintiff, St. Louis Southwestern Railway Company, by its Solicitors, and says that the order and decree made and entered herein on the 8th day of June, A. D. 1928, by the United States District Court, for the Southern District of Illinois, allowing the Motion of the defendant to Dismiss, and dismissing its Bill of Complaint and dissolving the Temporary Restraining Order heretofore entered herein, is erroneous

and against the just rights of the plaintiff, for the reasons hereinafter set forth; each of which the plaintiff assigns as error:

1. The District Court erred in allowing the defendant's Motion to Dismiss, and in dismissing plaintiff's Bill of Complaint.

2. The District Court erred in refusing to hold that Paragraphs 105 and 107 of the General Incorporation Act of the State of Illinois, as applied to the plaintiff under the facts set forth in the Bill of Complaint, and the exaction by the defendant of a Franchise Tax of One Thousand ($1,000.00) Dollars thereunder, deprived the plaintiff of its property without due process of law, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

3. The District Court erred in refusing to hold that
56 Paragraphs 105 and 107 of the General Incorporation Act of the State of Illinois, as applied to the plaintiff, under the facts set forth in the Bill of Complaint and the exaction by the defendant of a Franchise Tax of One Thousand ($1,000.00) Dollars thereunder, constituted a direct burden on interstate commerce, in violation of plaintiff's rights under Clause 3 of Section 8 of Article 1, of the Constitution of the United States.

4. The District Court erred in refusing to hold that Paragraphs 105 and 107 of the General Incorporation Act of the State of Illinois, as applied to the plaintiff, under the facts set forth in the Bill of Complaint and the exaction by the defendant of a Franchise Tax of One Thousand ($1,000.00) Dollars thereunder, denied plaintiff of the equal protection of the law, and abridged its privileges and immunities as a citizen of the United States and of the State of Missouri, in violation of plaintiff's rights under the Fourteenth Amendment to the Constitution of the United States.

Wherefore, the plaintiff prays that the order and decree, heretofore mentioned, entered in this cause, be annulled, set aside, and held for naught, and that same be reversed and Remanded to said District Court with instructions to deny the defendant's Motion to Dismiss.

JOSEPH WHITNEL,
H. L. BROWNING,
Solicitors for Plaintiff.

(Endorsed) * * (Caption) * * Assignment of Errors.
Filed Jun 21 1928 at ..... o'clock ....M. S. T. Burnett, Clerk.

57 And afterwards, to wit: on the 21st day of June, A. D. 1928, the following further proceedings were had in said court in said cause and were entered of record to wit: Entered June 21, 1928.

58 • • (Caption) • •

ORDER ALLOWING APPEAL.

And now on this 21st day of June, A. D. 1928, comes the plaintiff, St. Louis Southwestern Railway Company, by H. L. Browning and Josiah Whitnel, its Solicitors, and prays an exception and an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the Orders and Decrees entered herein, on the 8th day of June, A. D. 1928, allowing the defendant's motion to dismiss and dismissing the plaintiff's Bill of Complaint, for want of equity, and setting aside and disolving the Temporary Restraining Order heretofore entered in said cause, which exception and prayer for appeal is allowed by the Court; plaintiff to file Appeal Bond in the sum of Two Thousand ($2,000.00) Dollars, with good and sufficient surety to be approved by the Court; same to be filed in thirty days.

Enter:

LOUIS FITZHENRY,
Judge.

Endorsed: Filed Jun. 21, 1928, S. T. Burnett, Clerk.

59 And afterwards, to wit: on the 21st day of June, A. D. 1928, there was filed in the office of the clerk of the district court of the United States for said district, a certain Bond on Appeal, which said Bond was and is in the words and figures, following, to wit: Filed June 21, 1928.

60 Certified copy.

General Power of Attorney.

41465.

Know All Men By These Presents:

That the United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the

Power of Attorney.

State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

T. F. Browne, J. E. Auchly and Jno. W. Bebout

of the City of St. Louis, State of Missouri, its true and lawful attorneys for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said United States Fidelity and Guaranty Company, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said United States Fidelity and Guaranty Company, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever any one of the said T. F. Browne and the said J. E. Auchly and the said Jno. W. Bebout may lawfully do in the premises by virtue of these presents.

In Witness Whereof the said United States Fidelity and Guaranty Company has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 29th day of December, A. D. 1926.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
By (Signed) CHAS. O. SCULL,
Vice-President.

(Seal)

(Signed) CHARLES V. HEMSLEY,
Assistant Secretary.

61 State of Maryland } ss.
Baltimore City }

On this 29th day of December, A. D. 1926 before me personally came Chas. O. Scull, Vice-President of the United States Fidelity and Guaranty Company, and Charles V. Hemsley, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said Chas. O. Scull andCharles V. Hemsley were respectively the Vice-President and Assistant Secretary of the said United States Fidelity and Guaranty Company, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of

Attorney was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary respectively, of the Company.

My Commission expires the first Monday in May, A. D. 1927.

(Signed) A. D. PATRICK,
Notary Public.

(Seal)

State of Maryland, } Set.
Baltimore City. }

I, Stephen C. Little, Clerk of Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that A. D. Patrick, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 29th day of December, A. D. 1926.

(Signed) STEPHEN C. LITTLE,
Clerk of the Superior Court of Baltimore City.

(Seal)

62 COPY OF RESOLUTION.

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, Be It Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one

of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings or by law allowed, and

Also in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed, or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for
63 in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Charles V. Hemsley, Assistant Secretary of the United States Fidelity and Guaranty Company, hereby certify that at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company, at the City of Baltimore, on the 11th day of July, A. D. 1910, at which was present a quorum of said Directors, duly authorized to act in the premises, resolutions were passed and entered on the minutes of said Company, of which resolutions the foregoing is a true copy and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and the seal of the United States Fidelity and Guaranty Company, this 29th day of December, A. D. 1926.

(Signed) CHARLES V. HEMSLEY,
Assistant Secretary.

(Seal)

I, Charles V. Hemsley, Assistant Secretary of the United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a full, true and correct copy of the original power of attorney given by said Company to T. F. Browne, J. E. Auchly and Jno. W. Bebout of St. Louis, Missouri, authorizing and empowering them to sign bonds as therein set forth; and do hereby further certify that the said power of attorney is still in full force and effect.

Given under my hand and the seal of said Company, at Baltimore, Maryland, this 15th day of December, A. D. 1927.

CHARLES V. HEMSLEY,
Assistant Secretary.

64 BOND ON APPEAL.

Know All Men by These Presents: That we, the St. Louis Southwestern Railway Company, a corporation, plaintiff, as principal, and United States Fidelity & Guaranty Co. as surety, are held and firmly bound unto Louis L. Emmerson, as Secretary of State of the State of Illionis, defendant, in the full and just sum of Two Thousand ($2,000.00) Dollars, to be paid to said Louis L. Emmerson as Secretary of State of the State of Illinois, his successor or assign, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by the presents.

Sealed with our seals and dated this 16th day of June, A. D. 1928.

Whereas, lately in the District Court of the United States for the Southern District of Illinois, in a suit in Equity pending in said Court between the above bounden St. Louis Southwestern Railway Company, as plaintiff, and said Louis L. Emmerson, as Secretary of State of the State of Illinois, as defendant, a certain order and decree was entered, dismissing the Bill of Complaint of said St. Loius Southwestern Railway Company for want of Equity, and said plaintiff having prayed and obtained an appeal therefrom, to the United States Circuit Court of Appeals, for the Seventh Circuit.

Now the Condition of the above obligation is such, that if the said St. Louis Southwestern Railway Company, plaintiff, shall prosecute its said appeal with effect and answer all damages and costs, if it fails to make good its plea, then the

above obligation to be void, otherwise to remain in full force and virtue.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By JAMES E. GASSTANG,
Atty.

UNITED STATES FIDELITY & GUARANTY CO.
By T. F. BROWNE,
Attorney-in-fact.

Attest:

.....
Secretary.

Approved:
LOMIS FITZHENRY.

Endorsed: Filed Jun. 21, 1928, S. T. Burnett, Clerk.

Entered July 21, 1928.

68 And afterwards, to wit: on the 21st day of July, A. D. 1928, the following further proceedings were had in said court in said cause and were entered of record to wit:

69 * * (Caption) * *

On motion of plaintiff-appellant by Josiah Whitnel, Esq., its solicitor, for good cause shown, it is ordered by the court that the time for filing transcript of record on appeal and docketing said cause in the United States Circuit Court of Appeals for the Seventh Circuit be, and the same is hereby extended for a period of thirty days from and after this date, to and including August 20th, A. D. 1928.

Dated this 21st day of July, A. D. 1928.

LOUIS FITZHENRY,
U. S. District Judge.

Enter

Endorsed: Filed Jul. 21, 1928. S. T. Burnett, Clerk.

65 And afterwards, to wit: on the 21st day of June, A. D. 1928, there was filed in the office of the clerk of the district court of the United States for the Southern District of Illinois, a certain Praecipe for Record, which said Praecipe for Record was in the words and figures, following, to wit:

66 * * (Caption) * * Filed June 21, 1928.

PRAECIPE.

To the Honorable S. T. Burnett, Clerk of the United States District Court, Southern District of Illinois:

You will please prepare a record in the above case, for appeal to the United States Court of Appeals, Seventh Circuit, including therein, the following:

1. Placita.
2. Bill of Complaint.
3. Plaintiff's Motion for Temporary Restraining Order.
4. Temporary Restraining Order.
5. Chancery Subpoena and return thereon.
6. Defendant's Motion to Dismiss.
7. All Orders and Decrees of Court.
8. Exception of plaintiff to Order of Court dismissing Bill and allowance of same.
9. Petition for Appeal and Order allowing same.
10. Assignment of Errors.
11. Appeal Bond and Order approving same.
12. Praecipe for Record.
13. Citation and acknowledgement thereon.

Dated this 20th day of June, A. D. 1928.

JOSIAH WHITNEL,
H. L. BROWNING,
Solicitors for Plaintiff.

67 UNITED STATES OF AMERICA,

In the United States District Court.

St. Louis Southwestern Railway Company, a corporation,
Plaintiff,
vs.
Louis L. Emmerson, Secretary of State of the State of Illinois.
Defendant.

JOSIAH WHITNEL, being first duly sworn on oath states: That on the 20th day of June, A. D. 1928, he delivered a copy of the foregoing "Praecipe for record" to M. B. L.

Catron, Assistant Attorney General of the State of Illinois, at Springfield, Illinois; that said B. L. Catron represented the defendant Loius L. Emmerson, as Secretary of State of the State of Illinois, in the foregoing cause.

Dated this 21st day of June, A. D. 1928.

JOSIAH WHITNEL.

Subscribed and sworn to before me this 21st day of June, A. D. 1928.

VIOLA MCDONNELL,
Notary Public.

(Notarial Seal)

Endorsed: Filed Jun. 21, 1928, S. T. Burnett, Clerk.

71 United States of America } ss:
Southern District of Illinois }

I, S. T. Burnett, Clerk of the United States District Court in and or the Southern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original proceedings had of record and on file in the cause entitled St. Louis Southwestern Railway Company, a corporation vs. Louis L. Emmerson, Secretary of State of the State of Illinois, No. 800, in equity, prepared in accordance with praecipe filed therein, as fully as the same appear from the original files and records of said court in said cause now remaining in my custody and control.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Springfield this 28th day of July, A. D. 1928.

S. T. BURNETT
Clerk.

(Seal)

Endorsed: No. 800. Equity, United States District Court Southern District of Illinois St. Louis Southwestern Railway Company, a corporation. vs. Louis L. Emmerson, Secretary of State of the State of Illinois. Transcript of Record.

70 United States of America: ss

To: The President of the United States of America,

To: Louis L. Emmerson, as Secretary of State of the State of Illinois.

Greetings:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, Seventh Circuit, to be holden at the City of Chicago, Illinois, within thirty (30) days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of Illinois, in a cause wherein the St. Louis Southwestern Railway Company is appellant and Louis L. Emmerson, Secretary of State of the State of Illinois is respondent, to show cause, if any there be, why the Decree in the said Appeal mentioned, should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Louis FitzHenry, Judge of the District Court of the United States, for the Southern District of Illinois, this 21st day of June, A. D. 1928.

LOUIS FITZHENRY,
District Judge.

Service of the above citation acknowledged this 21st day of June, A. D. 1928.

B. L. CATRON,
Assistant Attorney General of the State of Illinois, and Solicitor for Respondent.

Endorsed: Filed Jun. 21, 1928, S. T. Burnett, Clerk.

Clerk's certificate to foregoing transcript omitted in printing.

[Caption omitted]

Appearances of counsel omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

4075

ST. LOUIS SOUTHWESTERN RAILWAY CO.

vs.

LOUIS L. EMMERSON, Secretary of State of Illinois

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

ORDER SETTING CAUSE—Oct. 2, 1928

It is ordered by the Court that this cause be, and the same is hereby, set down for hearing on Tuesday, October 30, 1928.

Minute entry of argument and submission October 30, 1928, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM AND SESSION, 1928

No. 4075

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Appellant,

vs.

LOUIS L. EMMERSON, Secretary of State of the State of Illinois, Appellee

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

Before Alschuler, Evans and Page, Circuit Judges

OPINION—Filed Jan. 2, 1929

EVANS, C. J.:

This appeal is from a decree dismissing appellant's bill for want of equity.

The relief sought in this suit was an injunctional decree restraining defendant from collecting a franchise tax, from imposing a penalty resulting from the non-payment of said tax, and from canceling plaintiff's right to transact business in Illinois.

The relief thus sought was based upon appellant's contention that section 105 and 107 of the General Corporation Act of Illinois were, as to appellant, unconstitutional and void, the contention being that these statutes are repugnant to section 1 of the fourteenth amendment of the Constitution of the United States as well as to section 2, clause 1, article 4, of said Constitution.

The statutes involved are set forth in the margin.*

*No. 105. Annual License Fee or Franchise Tax—Amount—Minimum—No Par Value Stock. Each corporation for profit, including railroads, except insurance companies, heretofore or hereafter organized under the laws of this state or admitted to do business in this state, and required by this act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in this state, but in no event shall the amount of such license fee or franchise tax be less than that

Appellant is a Missouri corporation licensed to do business in Illinois. Its issued capital stock is of a par value of $36,249,750.00. Its property is located in various states, less than .0076 per cent is in Illinois. It filed its annual report with appellee whose duty it was to assess and collect a license or franchise tax determined by the sections above quoted. This tax was assessed at $1,000 and demand for its payment was duly made. Appellant offered to pay $135.21 but disputed appellee's right to demand the larger sum. The amount tendered ($135.21) was reached by applying the first part of section 105, the validity of which is not questioned. In short, appellant had $270,423.00 of its total assets located in Illinois. It offered to pay five cents on each one hundred dollars of property located in the state.

Appellee objects to the jurisdiction of the federal court and also insists that the bill does not specifically assail the constitutionality of section 105. In addition he argues that the statute violates no right guaranteed appellant by the constitution of the United States.

The first two contentions of appellee require no extended discussion.

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required by this act of corporations having no property or business in this state.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

No. 106. Ascertainment of License Fee or Franchise Tax in Case of Corporations Generally. In ascertaining the amount of the issued capital stock represented by business transacted and property located in this state, the sum of the business of any foreign or domestic corporation transacted in this state and the total property of such corporation located within this state shall be divided by the sum of the total business of the corporation, and the total property of the corporation wherever situated.

No. 107. * * * Basis in Case of Corporation Without Property in State and Doing No Business in State—Where Stock of No Par Value. In case it appears from the annual report that the corporation has no property located in this state, and is transacting no business in this state, the following fees shall be paid annually to the Secretary of State as an annual franchie tax: All such corporations having issued capital stock of $50,000 or less shall pay an annual fee of $10; corporations having issued capital stock of more than $50,000, but not exceeding $200,000, shall pay an annual fee of $14; corporations having issued capital stock of more than $200,000, but not exceeding $500,000, shall pay an annual fee of $20; corporations having issued capital stock of more than $500,000 but not exceeding $1,000,000, shall pay a fee of $50; corporations exceeding $10,000,000, shall pay a fee of $200; corporations having issued capital stock of more than $10,000,000, but not exceeding $20,000,000, shall pay a fee of $500; and all corporations having issued capital stock in excess of $20,000,000 shall pay an annual fee of $1,000."

The court had jurisdiction. Not only the tax of $1,000 but threatened penalties and appellant's right to continue to transact business in Illinois were involved. Appellant alleged this loss and damage to be $5,000.00. This was sufficient. Packard v. Banton, 264 U. S. 140; In re Heller Piano Co., 283 Fed. 904; McNichols v. International Typographical Union, 21 Fed. 497.

As to appellant's urge that the bill does not specifically attack the constitutionality of section 105, it is sufficient to say that the complaint will not be tested by any theory of the pleader or by any conclusions of law he may set forth in the complaint. Its sufficiency will be determined by the facts alleged, which alone must determine the plaintiff's right to relief.

So measured, we think plaintiff's bill sets forth facts sufficient to entitle it to the relief sought provided we conclude that the Illinois statutes upon which the tax is based are unconstitutional.

Appellee relies on the authority of General Signal Railway Company v. Virginia, 246 U. S. 500. Appellant, on the other hand, distinguishes this case on two grounds. It contends (a) that the validity of the statutes here under consideration involves the authority of the state to impose a tax upon a foreign corporation for continuing to do business therein whereas the General Signal Railway Company case involved a statute which imposed a tax on a foreign corporation and as a condition to its right to enter the state. Appellant also points out (b) that the Virginia statute under consideration in the General Signal Railway Company case contained a maximum tax provision whereas the last clause in section 105 of the Illinois statute contains what might be called a minimum provision.

An examination of Hanover Fire Ins. Co. v. Harding, 272 U. S. 494 makes it clear that there is a difference between imposing a tax on a foreign corporation about to enter the state and the imposition of an annual tax or license fee for the right to continue to do business in the state.

Even when dealing with the foreign corporation's right to enter the state, the legislature cannot place a burden upon the applicant that contravenes any right given it by the constitution of the United States.

For example, in International Paper Company v. Massachusetts, frequently cited with approval in later cases, (Air-Way Electric Appliance Corporation v. Day, Treasurer of the State of Ohio, 266 U. S. 71; Ozark Pine Line Corporation v. Monier, 266 U. S. 555; Alpha Portland Cement Company v. Massachusetts, 268 U. S. 203; Rhode Island Hospital Trust Company v. Rufus A. Doughton, 270 U. S. 69; Frost Trucking Co. v. R. R. Com., 271 U. S. 583) the court held as void and unconstitutional a statute imposing a tax upon a foreign corporation applying for admission to Massachusetts which was based upon the total capital of said corporation without, as well as within, the state of Massachusetts. In this opinion the court pronounced six definite and specific legal propositions which are most aidful in testing the authority of state legislatures to impose tax burdens on foreign corporations desirous of entering the state.

In the case of Looney v. Crane Company, 245 U. S. 178, the statute condemned dealt with franchise taxes imposed as a condition of the foreign corporation's continuing to do business.

Examining the statutes here under consideration for the purpose of applying the rule laid down in the aforesaid decisions, we find the subject matter of section 105 is "Annual License Fee or Franchise Tax—Amount—Minimum—No Par Value Stock." The last clause of the first sentence of this section makes applicable section 107, the title to which reads: "Basis in Case of Corporation Without Property in State and Doing No Business in State." The first sentence of section 105 exclusive of its last clause provided for the imposition of a tax based on the foreign corporation's property within the state. The state's right to thus tax the foreign corporation is not questioned by appellant. However, the state went further and added an additional tax such as provided in section 107 provided such tax exceeded the amount which the foreign corporation would be required to pay under the first part of section 105. The last clause of the first sentence of section 105 makes applicable section 107 and section 107 enlarges the tax which the foreign corporation would otherwise be required to pay.

Section 107, applied to foreign corporations such as appellant, imposes a tax on the basis of the foreign corpora-

tion's capital, without, as well as within, the state. This is what is condemned in International Paper Company v. Massachusetts, supra, and Looney v. Crane Company, supra.

It is true the additional burden imposed by the application of section 107 does not vary with each additional share. But the additional burden imposed upon appellant and all other corporations whose minimum under section 105 is exceeded by the application of 107 is based upon appellant's total capitalization, including property outside of the state. Such a burden the state cannot impose.

"The amount demanded is unimportant when there is no equitable basis for the tax." Alpha Portland Cement Co. v. Mass., 268 U. S. 180.

The decree is reversed with directions to enter one consistent with the views expressed in this opinion.

IN UNITED STATES CIRCUIT COURT OF APPEALS

4075

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

LOUIS L. EMMERSON, Secretary of State of the State of Illinois .

DECREE—Jan. 2, 1929

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with directions to enter a decree consistent with the views expressed in the opinion of this Court.

No. 4075

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION TO SUBSTITUTE PARTY APPELLEE

Now comes William J. Stratton, successor to Louis L. Emmerson, as Secretary of State of the State of Illinois, appellee in said cause, by Oscar E. Carlstrom, Attorney General, and moves the Court for leave to substitute his name in place of the name of said Louis L. Emmerson, as such Secretary of State, as the appellee in all further proceedings in said cause.

Oscar E. Carlstrom, Attorney General, Attorney for Appellee.

Petition for rehearing, covering 12 pages, filed January 22, 1929, omitted from this print. It was denied and nothing more by order February 21, 1929.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SUBSTITUTING PARTY APPELLEE—Jan. 22, 1929

On motion of Mr. Oscar E. Carlstrom, counsel for appellee, it is ordered by the Court that William J. Stratton, Secretary of State of the State of Illinois be substituted as appellee in this cause in the place and stead of Louis L. Emmerson, Secretary of State of the State of Illinois.

Answer to petition for rehearing, covering seven pages, filed January 30, 1929, omitted from this print.

In United States Circuit Court of Appeals

[Title omitted]

Order Denying Petition for Rehearing—Feb. 21, 1929

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby denied.

In United States Circuit Court of Appeals

[Title omitted]

Petition for Appeal—Filed April 22, 1929

Considering himself aggrieved by the decision of the United States Circuit Court of Appeals for the Seventh Circuit in the above entitled cause, the appellee therein, now appellant, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon, if any be required.

Assignment of Errors

And the said appellant assigns the following errors in the record and proceedings in said cause:

1. The United States Circuit Court of Appeals for the Seventh Circuit erred in reversing the order and decree of the District Court of the United States for the Southern District of Illinois, Southern Division, in said cause.

2. The said United States Circuit Court of Appeals erred in directing the said District Court to enter a decree consistent with the views expressed in the opinion of the said Circuit Court of Appeals in said cause.

3. The said United States Circuit Court of Appeals erred in refusing to approve and affirm the order and decree of the said District Court dismissing the bill of complaint in said cause for want of equity.

4. The United States Circuit Court of Appeals erred in holding that the said bill of complaint in said cause set forth facts sufficient to entitle the plaintiff therein to the relief therein sought and prayed.

5. The said United States Circuit Court of Appeals erred in holding that Section 107 of the General Corporation Act of the State of Illinois, as applied to foreign corporations such as the plaintiff, imposes an invalid tax under the decisions of the Supreme Court of the United States.

6. The United States Circuit Court of Appeals erred in holding that said Section 107 of the General Corporation Act of Illinois imposes an unlawful burden upon the capital and/or property of the plaintiff outside of that State.

7. The said United States Circuit Court of Appeals erred in holding in effect that said Section 107 of the General Corporation Act of Illinois, as applied to the plaintiff under the provision of the last clause of Section 105 of said Act, is unconstitutional and void.

8. The said United States Circuit Court of Appeals erred in holding in effect that said Section 107 of the General Corporation Act of Illinois, as applied to the plaintiff pursuant to the provision of the last clause of Section 105 of said Act, imposes an illegal burden upon the interstate commerce of the plaintiff, and/or discriminates against it or takes its property without due process of law, contrary to the Commerce Clause of the Constitution of the United States, or the provisions of the Fourteenth Amendment.

9. The said United States Circuit Court of Appeals erred in refusing to hold that said Section 107 of the General Corporation Act of Illinois as applied to the plaintiff pursuant to the provisions of the last clause of Section 105 of said Act, does not violate any of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, as alleged in the said bill of complaint.

Prayer for Reversal

For which said errors the appellee in said cause, now appellant herein, prays that the said judgment or decree of the

said United States Circuit Court of Appeals in the above entitled cause, be reversed and a judgment rendered therein in favor of this appellant, and for costs herein.

Oscar E. Carlstrom, Attorney General of Illinois, Counsel for Appellee, now Appellant. B. L. Catron, Assistant Attorney General, of Counsel.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—April 22, 1929

The appellee in the above entitled cause, now appellant herein, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States, from the judgment made and entered in said cause by the United States Circuit Court of Appeals for the Seventh Circuit, reversing the decree of the District Court of the United States for the Southern District of Illinois, Southern Division, in said cause, and from each and every part thereof, and having presented and filed his petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the United States Circuit Court of Appeals for the Seventh Circuit in this cause, as provided by law;

And it is further ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same within 30 days of this date.

And it is further ordered that security for costs on appeal herein be fixed in the sum of Five Hundred Dollars.

In United States Circuit Court of Appeals

[Title omitted]

Præcipe for Transcript of Record—Filed April 22, 1929

To the Honorable Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You will please prepare a transcript of the record in the above entitled case for appeal to the Supreme Court of the United States and include therein the following, to wit:

1. Transcript of the record and proceedings in said cause in the District Court of the United States for the Southern District of Illinois, Southern Division, filed in your office upon the appeal from said Court.
2. Opinion and judgment of the said United States Circuit Court of Appeals in said cause.
3. Petition for rehearing in said cause.
4. Order denying petition for rehearing.
5. Petition for Appeal to the Supreme Court of the United States with assignment of errors and prayer for reversal.
6. Order allowing appeal and appeal bond.
7. Citation and return thereon.
8. All other orders and proceedings of said United States Circuit Court of Appeals in said cause.

Dated this 22nd day of April, A. D. 1929.

Oscar E. Carlstrom, Attorney General of Illinois, Counsel for Appellant. B. L. Catron, Assistant Attorney General, of Counsel.

[File endorsement omitted.]

Bond on appeal for $500.00, approved and filed April 29, 1929, omitted in printing.

Clerk's certificate to foregoing transcript omitted in printing.

Citation, in usual form, showing service on H. L. Browning et al., filed April 29, 1929, omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 20, 1929.

Comes now the appellant in the above entitled cause and states that he adopts his assignments of error as his statement of the points upon which he intends to rely in this Court in this case.

And the appellant further states and represents that the whole of the record in said cause, as filed herein, is necessary for the consideration of the case in this Court.

Oscar E. Carlstrom, Attorney General of the State of Illinois, Counsel for Appellant. B. L. Catron, Assistant Attorney General, of Counsel.

Proof of Service

STATE OF ILLINOIS,
Sangamon County, ss:

Charles E. Long, being first duly sworn upon his oath, states that he is an Attache of the office of the Attorney General of the State of Illinois, and that on the 17th day of May, A. D. 1929, he deposited in the Post Office at Springfield, Illinois, postage fully prepaid, a copy of the statement of points to be relied upon and designation of the parts of the record to be printed in the above entitled cause in said Court, addressed to Josiah Whitnel and H. L. Browning, Attorneys at Law, First National Bank Building, East St. Louis, Illinois, they being Counsel of Record for the appellee in said cause.

Charles E. Long.

Subscribed and sworn to before me this 17th day of May, A. D. 1929. Coy N. Overaker, Notary Public. (Seal Coy N. Overaker, Notary Public, Sangamon County).

[File endorsement omitted.]

Endorsed on cover: File No. 34,223. United States Circuit Court of Appeals, Seventh Circuit. Term No. 98. William J. Stratton, Secretary of State of the State of Illinois, appellant, vs. St. Louis Southwestern Railway Company. Filed May 20th, 1929. File No. 34,223.

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